FEDERAL REGISTER

VOLUME 7 NUMBER 19

Washington, Wednesday, January 28, 1942

The President

EXECUTIVE ORDER

PRESCRIBING REGULATIONS GOVERNING THE GRADES AND RATINGS OF ENLISTED MEN OF THE ARMY OF THE UNITED STATES

By virtue of and pursuant to the authority vested in me by the act of June 20, 1936, 49 Stat. 1554, it is hereby ordered that, effective on and after the date hereof, the grades and ratings of the enlisted men of all components of the Army of the United States in active Federal service shall be as set forth herein, and the number of such enlisted men in the several grades and ratings shall not exceed the percentages specified herein of the authorized active duty enlisted strength of the Army of the United States.

1. The several grades and maximum percentages of enlisted men therein shall be as follows:

	Percentage
1st Grade—Master Sergeants	1.5
2nd Grade—First and Technical Sergeants	3.0
3rd Grade—Staff Sergeants and Technicians 3rd Grade	7.0
4th Grade—Sergeants and Technicians 4th Grade	18.0
5th Grade—Corporals and Technicians 5th Grade	27.0
6th Grade—Privates First Class	27.0
7th Grade—Privates, the number of whom will be such that when added to the number of enlisted men above Grade Seven and to the authorized number of aviation cadets, the total will not exceed the authorized active duty enlisted strength of the Army of the United States.	

2. Specialists' ratings and the maximum percentages of enlisted men therein shall be as follows:

Specialists' Ratings:	*Percentage*
1st Class	1.0
2nd Class	1.5
3rd Class	5.0
4th Class	8.0
5th Class	8.0
6th Class	13.0

3. During the time that any enlisted men hold specialists' ratings, reductions in the authorized maximum numbers in the first six grades will be effected. These reductions will equal in cost, the cost of specialists' ratings held.

4. Executive Order No. 8824[1] of July 18, 1941, prescribing regulations governing the grades and ratings of enlisted men of the Regular Army for the fiscal year 1942, is hereby revoked.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
January 26, 1942.

[No. 9041]

[F. R. Doc. 42-742; Filed, January 27, 1942; 10:15 a. m.]

EXECUTIVE ORDER

WITHDRAWING PUBLIC LANDS FOR USE OF THE WAR DEPARTMENT FOR AVIATION PURPOSES

OREGON

By virtue of the authority vested in me by the act of July 9, 1918, c. 143, 40 Stat. 845, 848 (U. S. C., title 10, sec. 1341), it is ordered that, subject to valid existing rights, the following-described public lands be, and they are hereby, withdrawn from all forms of appropriation under the public-land laws, including the mining laws, and reserved for the use of the War Department for aviation purposes:

WILLAMETTE MERIDIAN

T. 4 N., R. 24 E., Sec. 20;
T. 4 N., R. 30 E., Sec. 6, E½;
containing 950.36 acres.

This order shall take precedence over, but shall not rescind or revoke, (1) Executive Order No. 6910, of November 26, 1934, as amended, and (2) the order of December 18, 1936, of the Secretary of the Interior, establishing Grazing District No. 7, Oregon, so far as such orders affect any of the above-described lands.

It is intended that the lands reserved by this order shall be returned to the administration of the Department of the Interior when they are no longer needed

[1] 6 F.R. 3577.

CONTENTS

(Continued on next page)

FEDERAL REGISTER

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CONTENTS—Continued

for the purposes for which they are reserved.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
January 26, 1942.

[No. 9042]

[F. R. Doc. 42-743; Filed, January 27, 1942; 10:16 a. m.]

Rules, Regulations, Orders

TITLE 10—ARMY: WAR DEPARTMENT

CHAPTER VII—PERSONNEL

PART 75—ADMISSION TO THE UNITED STATES MILITARY ACADEMY [1] [2]

§ 75.22 *Physical requirements.*

* * * * *

(b) *Vision.* (1) Vision as determined by the official test types (without a cycloplegic) must not fall below 20/30 in either eye without glasses, corrected with glasses to 20/20 in each eye, when no organic disease in either eye exists. Errors of refraction, if considered by the board to be excessive, may be a cause for rejection even though the visual acuity falls within acceptable limits. Total hyperopia of more than two diopters or total myopia of more than three-quarters (.75) diopter in any meridian in either eye is cause for rejection.

(2) * * * (R.S. 161; 5 U.S.C. 22) [Par. 43*b*, Information Relative to the Appointment and Admission of Cadets to the United States Military Academy, Nov. 28, 1941, and Par. 1*a* (3) (*a*), AR 40-100, Sept. 10, 1940, as amended by Cir. 17, W.D., Jan. 21, 1942]

* * * * *

[SEAL] E. S. ADAMS,
Major General,
The Adjutant General.

[F. R. Doc. 42-744; Filed, January 27, 1942; 10:25 a. m.]

TITLE 30—MINERAL RESOURCES

CHAPTER III—BITUMINOUS COAL DIVISION

[Docket No. A-1263]

PART 327—MINIMUM PRICE SCHEDULE, DISTRICT NO. 7

ORDER GRANTING TEMPORARY RELIEF AND CONDITIONALLY PROVIDING FOR FINAL RELIEF IN THE MATTER OF THE PETITION OF DISTRICT BOARD NO. 7 FOR THE ESTABLISHMENT OF A PRICE CLASSIFICATION FOR SIZE GROUP NO. 10 COALS OF MINE INDEX NO. 73, IN DISTRICT NO. 7, FOR ALL SHIPMENTS EXCEPT TRUCK, PURSUANT TO SECTION 4 II (D) OF THE BITUMINOUS COAL ACT OF 1937 AND ORDERS NOS. 303 AND 305 OF THE DIRECTOR

A petition, pursuant to the Bituminous Coal Act of 1937, having been duly filed with this Division by District Board No. 7 for the establishment of Price Classification "C" for Size Group No. 10 coals of Mine Index No. 73, in District No. 7, and the granting of temporary relief pending the final disposition of the subject matter; and

It appearing that a reasonable showing of necessity has been made for the granting of temporary relief in the manner hereinafter set forth; that no petitions of intervention have been filed with the Division in the above-entitled matter; and that the following action is necessary in order to effectuate the purposes of the Act;

It is ordered, That, pending final disposition of the above-entitled matter, temporary relief is granted as follows: Commencing forthwith, § 327.11 (*Low volatile coals: Alphabetical list of code members*) in the Schedule of Effective Minimum Prices for District No. 7 for All Shipments Except Truck is supplemented to include the establishment of Price Classification "C" for the coals of the Glen Rogers Mine, Mine Index No. 73, of Raleigh-Wyoming Mining Company, a code member in District No. 7, for all shipments except truck.

It is further ordered, That pleadings in opposition to the original petition in the above-entitled matter and applications to stay, terminate or modify the temporary relief herein granted may be filed with the Division within forty-five (45) days from the date of this Order, pursuant to the Rules and Regulations Governing Practice and Procedure before the Bituminous Coal Division in Proceedings Instituted Pursuant to section 4 II (d) of the Bituminous Coal Act of 1937.

It is further ordered, That the relief herein granted shall become final sixty (60) days from the date of this Order, unless it shall otherwise be ordered.

Dated: January 24, 1942.

[SEAL] DAN H. WHEELER,
Acting Director.

[F. R. Doc. 42-759; Filed, January 27, 1942; 10:41 a. m.]

[Docket No. A-1094]

PART 328—MINIMUM PRICE SCHEDULE, DISTRICT NO. 8

ORDER CORRECTING TYPOGRAPHICAL ERRORS AND INSERTING OMISSIONS IN THE MATTER OF THE PETITION OF DISTRICT BOARD NO. 8 FOR THE ESTABLISHMENT OF PRICE CLASSIFICATIONS AND MINIMUM PRICES FOR THE COALS OF CERTAIN MINES IN DISTRICT NO. 8, PURSUANT TO SECTION 4 II (D) OF THE BITUMINOUS COAL ACT OF 1937

In an Order of November 5, 1941, 6 F.R. 6035, Granting Temporary Relief and Conditionally Providing for Final Relief in the above-entitled matter, the following errors occurred:

The twelfth paragraph of the Order on page 6035 of the FEDERAL REGISTER reads as follows:

"No price classification and no minimum prices are established herein for the coals of the Hodge Mine (Mine Index No. 3603) of Osborn Mining Co., (Clifford J. Osborn) for *rail* shipment because the records of the Division indicate that prices were previously established for this mine for *rail* shipment in Docket No. A-795 under the name of Mine No. 2 of C. J. Osborn."

No price classifications and no minimum prices were established for the coals of the Hodge Mine for *truck* shipment

[1] Subparagraphs under § 75.22 (b) are designated (1) and (2) and subparagraph (b) (1) is amended.

[2] 6 F.R. 613.

because they had been previously established. The word "truck" therefore should appear in the above-quoted paragraph instead of "rail." The mine is listed as Mine Index No. 3603; the correct Mine Index No. for this mine is 3606.

In the original petition, Mine Index Nos. 3806 and 544 were listed as belonging to J. W. Patrick (By-Product Elkhorn Coal Company). Because the Code Acceptance was signed J. W. Patrick, prices for these mines were established under the code member name of J. W. Patrick. It appears that "By-Product Elkhorn Coal Company" is also desired as part of the code member name.

The original petition listed the Stone Mine of J. A. Williams as Mine Index No. 4104 and for that reason it was so listed in the Order. It appears that this was a typographical error in the original petition and that this mine is designated Mine Index No. 4014.

In the Schedule marked "Supplement T", § 328.4 (*General prices for high volatile coals in cents per net ton for shipment into all market areas*), annexed to and made a part of the Order, under Pike County, Kentucky, Mine Index No. 3803 is listed as belonging to Conaway Fuel Company, Inc. It appears that "c/o Landon Elswick" was omitted as part of this code member's name.

It appearing that these typographical errors should be corrected and the omissions inserted;

Now, therefore, it is ordered, That the twelfth paragraph of the Order Granting Temporary Relief and Conditionally Providing for Final Relief, dated November 5, 1941, 6 F.R. 6035, be and the same hereby is amended to read:

"No price classifications and no minimum prices are established herein for the coals of the Hodge Mine (Mine Index No. 3606) of Osborn Mining Co., (Clifford J. Osborn) for truck shipment because the records of the Division indicate that prices were previously established for this mine for truck shipment in Docket No. A–795 under the name of Mine No. 2 of C. J. Osborn"; and

That in the Schedule marked "Supplement R" § 328.11 (*Alphabetical list of code members*), and in the Schedule marked "Supplement T", § 328.34 (*General prices for high volatile coals in cents per net ton for shipment into all market areas*), annexed to and made a part of the Order, there appear after the name J. W. Patrick, the following; (By-Product Elkhorn Coal Company); and

That Mine Index No. 4104 of the Stone Mine of J. A. Williams in the aforementioned "Supplement R", § 328.11 (*Alphabetical list of code members*), be changed to read Mine Index No. 4014; and

That there appear in the aforementioned "Supplement T", § 328.34 (*General prices for high volatile coals in cents per net ton for shipment into all market areas*), under Pike County, Kentucky, after the name Conaway Fuel Company, Inc., the following: (c/o Landon Elswick).

Dated: January 24, 1942.

[SEAL] DAN H. WHEELER,
Acting Director.

[F. R. Doc. 42–758; Filed, January 27, 1942; 10:40 a. m.]

TITLE 32—NATIONAL DEFENSE

CHAPTER IX—WAR PRODUCTION BOARD

SUBCHAPTER A—GENERAL PROVISIONS

[Regulation No. 1]

DELEGATING POWERS WITH RESPECT TO PRIORITIES TO THE DIRECTOR OF THE DIVISION OF INDUSTRY OPERATIONS; AND RATIFYING ACTIONS OF THE DIRECTOR OF PRIORITIES OF THE OFFICE OF PRODUCTION MANAGEMENT

Pursuant to the authority vested in me by Executive Order No. 9024[1] of January 16, 1942 and Executive Order No. 9040,[2] of January 24, 1942, the following Regulation is hereby issued:

(a) (1) The Director of the Division of Industry Operations, who shall be known as the Director of Industry Operations, shall perform the functions and exercise all the powers, authority and discretion conferred upon the President by section 2 (a) of the Act of June 28, 1940 (Public No. 671, 76th Cong.; 54 Stat. 676) as amended by the Act of May 31, 1941 (Public No. 89, 77th Cong.; 55 Stat. 236), except the power to ration products at the retail level conferred upon the Office of Price Administration by Directive No. 1 of the Chairman of the War Production Board, issued January 26, 1942.

(2) The Director of Industry Operations shall review, clear and approve for execution all requests or proposals originating from other Federal agencies, private industry, or other sources for priority action with respect to the procurement, production, transmission or transportation of materials, articles, power, fuel and other commodities; issue or provide for the issuance of all priority orders, warrants, certificates or ratings with respect to the supply, production, transmission, or transportation of materials, articles, power, fuel, and other commodities; and, with reference to specific priority authorities vested by law in established departments and agencies of the Government, certify to such departments and agencies, when he deems such action necessary to the most effective prosecution of war procurement and production, that preferential treatment is essential for certain materials, commodities, facilities or services.

(3) The Director of Industry Operations shall, in consultation with the United States Maritime Commission, determine when, to what extent, and in what manner, priorities shall be accorded to deliveries of material as provided in section 2 (a) (3) of Public No. 46, 77th Congress, First Session, entitled "An Act to Make Emergency Provision for Certain Activities of the United States Maritime Commission, and for Other Purposes", approved May 2, 1941. Deliveries of material shall take priority as provided in said Act in accordance with such determinations and the orders issued in pursuance thereof by the Director of Industry Operations.

(b) The Director of Industry Operations may exercise the powers, authority and discretion conferred upon him by this regulation through such officers of the Division of Industry Operations, and such other officials of the government (including the contracting and procurement officers and inspectors of the War and Navy Departments), and in such manner as he may determine.

(c) All existing rules, regulations, orders, directions, certificates and other actions of the Director of Priorities of the Office of Production Management are hereby ratified and confirmed and shall remain in full force and effect until they expire by their terms or are revoked or amended. (E.O. 9024, Jan. 16, 1942, 7 F.R. 329, E.O. 9040, Jan. 24, 1942, 7 F.R. 527; Sec. 2 (a), Public, No. 671, 76th Congress, Third Session, as amended by Public No. 89, 77th Congress, First Session)

January 26, 1942.

DONALD M. NELSON,
Chairman.

[F. R. Doc. 42–738; Filed, January 26, 1942; 2:51 p. m.]

[1] 7 F.R. 329.
[2] 7 F.R. 527.

[Regulation No. 2]

PART 902—REGULATIONS UNDER REQUISITIONING ACTS[1]

Amending and Ratifying Regulations Under the Requisitioning Acts Approved by the Supply Priorities and Allocations Board December 8, 1941, and Delegating Certain Power Thereunder

Pursuant to the authority vested in me by Executive Order No. 9024[2] of January 16, 1942 and Executive Order No. 9040[3] of January 24, 1942, the following Regulation is hereby issued:

(a) (1) The Regulations under Requisitioning Acts approved by the Supply Priorities and Allocations Board, December 8, 1941, are hereby amended as follows:

(i) Wherever "Office of Production Management" appears in said Regulations, "Chairman of the War Production Board" shall be substituted.

(ii) Wherever "General Counsel of the Supply Priorities and Allocations Board" appears in said Regulations, "General Counsel of the War Production Board" shall be substituted.

(2) Said Regulations, as amended by subparagraph (1) of this paragraph are hereby confirmed and continued in effect.

(3) In accordance with paragraph (f) of § 1600.1 of said Regulations, the Director of Industry Operations is hereby authorized and directed to exercise the powers, duties and discretion vested in the Chairman of the War Production Board by said Regulations, as amended by subparagraph (1) of this paragraph.

(b) The Director of Industry Operations may exercise the powers, authority and discretion conferred upon him by this regulation through such officers of the Division of Industry Operations, and such other officials of the government (including the contracting and procurement officers and inspectors of the War and Navy Departments), and in such

[1] These regulations appear under Part 1600 at 6 F.R. 6376.
[2] 7 F.R. 329.
[3] 7 F.R. 527.

manner as he may determine. (E.O. 9024, Jan. 16, 1942, 7 F.R. 329, E.O. 9040, Jan. 24, 1942, 7 F.R. 527; Public No. 829, 76th Congress, Third Session; Public No. 274, 77th Congress, First Session)

January 26, 1942.

DONALD M. NELSON,
Chairman.

[F. R. Doc. 42-739; Filed, January 26, 1942; 2:51 p. m.]

[Directive No. 1]

DELEGATION OF AUTHORITY TO THE OFFICE OF PRICE ADMINISTRATION WITH RESPECT TO RATIONING

Pursuant to the authority vested in me by Executive Order No. 9024 of January 16, 1942, and Executive Order No. 9040 of January 24, 1942, and in order to delegate to the Office of Price Administration authority to provide for the equitable rationing of products at the retail level, it is hereby ordered that:

(a) The Office of Price Administration is authorized and directed to perform the functions and exercise the power, authority and discretion conferred upon the President by section 2 (a) of the Act of June 28, 1940 (Pub. No. 671, 76th Cong., 54 Stat. 676) as amended by the Act of May 31, 1941 (Pub. No. 89, 77th Cong., 55 Stat. 236) with respect to the exercise of rationing control over (1) the sale, transfer or other disposition of products by any person who sells at retail to any person, and (2) the sale, transfer or other disposition of products by any person to an ultimate consumer. The term "ultimate consumer," as used by this Directive, means a person acquiring products for the satisfaction of personal needs as distinguished from one acquiring products for industrial or other business purposes. The term "person", as used in this Directive, includes an individual, partnership, association, business trust, corporation or any organized group of persons, whether incorporated or not: *Provided*, That in no event shall this paragraph (a) be deemed to authorize the Office of Price Administration to control the acquisition of products by or for the account of any of the following:

(1) The Army or Navy of the United States, the United States Maritime Commission, the Panama Canal, the Coast and Geodetic Survey, the Coast Guard, the Civil Aeronautics Authority, the National Advisory Commission for Aeronautics and the Office of Scientific Research and Development; or

(2) Government agencies or other persons acquiring such products for export to and consumption or use in any foreign country.

(b) The authority of the Office of Price Administration under this Directive shall include the power to regulate or prohibit the sale, transfer or other disposition of products to any retailer who has acted in violation of any rationing regulation or order prescribed by the Office of Price Administration hereunder, and shall include the power to regulate or prohibit the sale, transfer or other disposition of products to any wholesaler or other supplier of any retailer, directly or indirectly, if such wholesaler or other supplier has acted in violation of any rationing regulation or order prescribed by the Office of Price Administration hereunder. The Office of Price Administration is likewise authorized to require such reports and the keeping of such records, and to make such investigations, as it may deem necessary or appropriate for the administration of the rationing powers conferred herein; and it may take such measures as it may deem necessary or appropriate for the enforcement of any rationing regulation or order prescribed by it pursuant to this Directive.

(c) The Office of Price Administration may exercise the power, authority and discretion conferred upon it by this Directive through such officials, including part time and uncompensated special agents, and in such manner as it may determine.

(d) The Chairman of the War Production Board will, on request of the Office of Price Administration, advise the Office of Price Administration as to the portion of existing products available for rationing by the Office of Price Administration under this Directive.

(e) The Chairman of the War Production Board may from time to time delegate to the Office of Price Administration such additional powers with respect to the exercise of rationing control, or amend the delegation herein in such manner and to such extent, as he may determine to be necessary or appropriate.

(f) Nothing herein shall be construed to limit or modify any order heretofore issued by the Director of Priorities of the Office of Production Management, nor to delegate to the Office of Price Administration the power to extend, amend or modify any such order. (E.O. 9024, Jan. 16, 1942, 7 F.R. 329, E.O. 9040, Jan. 24, 1942, 7 F.R. 527; sec. 2 (a), Public, No. 671, 76th Congress, Third Session, as amended by Public, No. 89, 77th Congress, First Session)

January 24, 1942.

DONALD M. NELSON,
Chairman.

Approved:

FRANKLIN D ROOSEVELT
January 24, 1942.

[F. R. Doc. 42-740; Filed, January 26, 1942; 4:47 p. m.]

SUBCHAPTER B—DIVISION OF INDUSTRY OPERATIONS

PART 944—REGULATIONS APPLICABLE TO THE OPERATION OF THE PRIORITIES SYSTEM

Priorities Regulation No. 4—To Validate Certain Forms of Preference Rating Certificates

The following Regulation is issued by the Director of Industry Operations to promote the war effort of the United States and for the purpose of facilitating the functioning of the Division of Industry Operations.

§ 944.24 *Priorities Regulation No. 4—*(a) *Certain forms of preference rating certificate validated.* All preference rating certificates which have been or which may hereafter be duly issued over the facsimile signature of Donald M. Nelson as Director of Priorities are valid and shall continue valid in effect until termination or expiration by the terms thereof or by the circumstances or conditions of their application, or until hereafter cancelled, modified, changed, or amended by the Director of Industry Operations.

(b) *Effective date.* This Regulation shall take effect at once. (W.P.B. Reg. 1, Jan. 26, 1942, E.O. 9024, Jan. 16, 1942, 7 F.R. 329; E.O. 9040, Jan. 24, 1942, 7 F.R. 527; sec. 2 (a), Pub. No. 671, 76th Congress, Third Session, as amended by Pub. No. 89, 77th Congress, First Session)

J. S. KNOWLSON,
Director of Industry Operations.

JANUARY 26, 1942.

[F. R. Doc. 42-750; Filed, January 27, 1942; 10:21 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

CHAPTER I—GENERAL LAND OFFICE

[Circular No. 1502]

PART 185—GENERAL MINING REGULATIONS

SUBPART C—AREAS SUBJECT TO SPECIAL LAWS

Regulations to Permit Mining Within the Organ Pipe Cactus National Monument in Arizona

JANUARY 20, 1942.

§ 185.33h *Statutory authority.* By the Act of Congress approved October 27, 1941 (Public Law 281—77th Congress), all mineral deposits of the classes and kinds then subject to location, entry and patent under the United States mining laws within the Organ Pipe Cactus National Monument in Arizona, were made, exclusive of the land containing them, subject to disposal under such laws, with right of occupation and use of so much of the surface of the land as may be required for all purposes reasonably incident to the mining or removal of the minerals and under such general regulations as may be prescribed by the Secretary of the Interior.*

*§§ 185.33h to 185.33o, inclusive, issued under the authority contained in Public Law 281, 77th Congress, Oct. 27, 1941.

§ 185.33i *Mining locations.* The lands within the Organ Pipe Cactus National Monument as established by Proclamation No. 2232 dated April 13, 1937 (50 Stat. 1827), are open to prospecting for the kinds of mineral subject to location under the United States mining laws and upon discovery of any such mineral, locations may be made in accordance with the provisions of the mining laws and regulations thereunder. Such locations duly made will carry all the rights and incidents of mining locations, except that they will give to the locator no title to the land within their boundaries, or claim thereto, except the right to occupy and use so much of the surface of the land as required for all purposes reasonably necessary to mine and remove the minerals.*

§ 185.33j *Occupation and use of surface.* Occupation and use of the surface of a mining claim is restricted by the Act to such as is reasonably incident to the exploration, development and extraction of the minerals in the claim. Accordingly, any locator or patentee of a mining claim located under this Act will be entitled to such right. Prospectors and miners shall at all times conform to any rules now prescribed or which may be made applicable by the Secretary of the Interior to this monument. Special attention is directed to those regulations prohibiting hunting, trapping, and the carrying of firearms within the boundaries of the monument.*

CROSS REFERENCE: For regulations of the Secretary of the Interior affecting this monument, see 36 CFR, Chapter 1, Part 2 (FEDERAL REGISTER, March 26, 1941, Vol. 6, pp. 1626-1634).

§ 185.33k *Termination of right to use of surface of mining claims.* The right of occupation and use of the surface of the land embraced in the boundaries of a location, entry or patent pursuant to this Act will terminate when the minerals are mined out or the claim is abandoned.*

§ 185.33l *Title to minerals only.* Applications for patents and final certificates issued thereon for mining claims located under the Act should be noted "Organ Pipe Cactus National Monument Lands," and all patents issued for such claims will convey title to the minerals only, and contain appropriate reference to the Act and these regulations.*

§ 185.33m *Destroying vegetation prohibited.* The locator of a mining claim within the monument area shall refrain from destroying or disturbing vegetation within the boundaries of his claim except as is necessary for the proper development thereof for mining purposes.*

§ 185.33n *Construction of trails and roads.* Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining a permit from the Director of the National Park Service. Applications for such permits may be made through the officer in charge of the monument upon submitting a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee maintaining the road or trail in a passable condition, satisfactory to the officer in charge, so long as it is used by the permittee or his successors.*

§ 185.33o *Lands containing certain features not subject to location.* Lands containing springs, wells, water holes, other sources of water supply, monument headquarters, and recreation areas are not subject to location.*

FRED W. JOHNSON,
Commissioner.

I concur:

NEWTON B. DRURY,
Director, National Park Service.

Approved: January 20, 1942.

OSCAR L. CHAPMAN,
Assistant Secretary.

[F. R. Doc. 42-760; Filed, January 27, 1942; 10:24 a. m.]

Notices

DEPARTMENT OF THE INTERIOR.

Bituminous Coal Division.

[Docket No. B-185]

IN THE MATTER OF OLD BEN COAL CORPORATION, REGISTERED DISTRIBUTOR, REGISTRATION NO. 6983

NOTICE OF AND ORDER FOR HEARING

The Bituminous Coal Division finds it necessary in the proper administration of the Bituminous Coal Act of 1937 (the "Act") and the Bituminous Coal Code (the "Code") promulgated thereunder to determine

(a) Whether or not the Old Ben Coal Corporation, Registered Distributor, Registration No. 6983, whose address is 230 South Clark St., Chicago, Illinois, has violated any provisions of the Act, the Code, and Orders and regulations of the Division, including the Marketing Rules and Regulations, and Regulations for the Registration of Distributors, and the Distributor's Agreement (the "Agreement") dated July 21, 1939, executed and filed by the Old Ben Coal Corporation, pursuant to Order of the National Bituminous Coal Commission dated March 24, 1939, in General Docket No. 12, which was adopted as an Order of the Bituminous Coal Division on July 1, 1939;

(b) Whether or not the Old Ben Coal Corporation during the period subsequent to September 30, 1940, accepted and retained commissions as sales agent for the Hart Coal Company, a code member in District No. 9, although a certified copy of the contract of agency between the aforesaid parties was not on file with the Statistical Bureau for District No. 9, including commissions amounting to $1228.59 on approximately 9307.30 tons of coal produced at the Hart Coal Company's Moss Hill Mine, Mine Index No. 58, which were sold to the Louisville and Nashville Railroad Company for locomotive use during the period October 1, 1940, to May 31, 1941, both dates inclusive, resulting in a violation of Rule 9 (a) of Section II of the Marketing Rules and Regulations and, therefore, Paragraph (e) of its Agreement; and

(c) Whether or not the registration of Old Ben Coal Corporation should be revoked or suspended or other appropriate penalties should be imposed.

It is therefore ordered, That a hearing pursuant to § 304.14 of the Rules and Regulations for the Registration of Distributors, to determine whether or not the aforementioned Old Ben Coal Corporation has committed violations in the respects heretofore described and whether or not the registration of said distributor should be revoked or suspended, or other appropriate penalties be imposed, be held on March 2, 1942, at 10 a. m., at a hearing room of the Bituminous Coal Division at Room 705, U. S. Custom Court Building, Chicago, Illinois.

It is further ordered, That Edward J. Hayes or any other officer or officers of the Bituminous Coal Division duly designated for that purpose shall preside at the hearing in such matter. The officer so designated to preside at such hearing is hereby authorized to conduct said hearing, to administer oaths and affirmations, examine witnesses, subpoena witnesses, compel their attendance, take evidence, require the production of any books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, to continue said hearing from time to time, and to such places as he may direct by announcement at said hearing or any adjourned hearing or by subsequent notice, and to prepare and submit proposed findings of fact and conclusions and the recommendation of an appropriate order in the premises, and to perform all other duties in connection therewith authorized by law.

Notice of such hearing is hereby given to said Old Ben Coal Corporation and to all persons and entities having an interest in such proceeding.

Notice is hereby given that answer setting forth the position of the aforementioned Old Ben Coal Corporation with reference to the matters hereinbefore described, must be filed with the Bituminous Coal Division at its Washington Office or with any one of the field offices of the Division, within twenty (20) days after date of service hereof on the Old Ben Coal Corporation; and that failure to file an answer herein within such period, unless the presiding officer shall otherwise order, shall be deemed to be an admission by Old Ben Coal Corporation of the commission of the violations hereinbefore described and a consent to the entry of an appropriate order thereon.

All persons are hereby notified that the hearing in the above-entitled matter and orders entered therein may concern, in addition to the matters specifically alleged herein, other matters incidental and related thereto, whether raised by amendment, petition for intervention, or otherwise, and all persons are cautioned to be guided accordingly.

Dated: January 26, 1942.

[SEAL] DAN H. WHEELER,
Acting Director.

[F. R. Doc. 42-751; Filed, January 27, 1942; 10:38 a. m.]

[Docket No. 1729-FD]

IN THE MATTER OF BLUE LABEL COAL COMPANY, A PARTNERSHIP, DEFENDANT

ORDER APPROVING AND ADOPTING THE PROPOSED FINDINGS OF FACT AND PROPOSED CONCLUSIONS OF LAW OF THE EXAMINER AND CANCELLING AND REVOKING CODE MEMBERSHIP

This proceeding having been instituted upon a complaint filed with the Bituminous Coal Division, pursuant to sections 4 II (j) and 5 (b) of the Bituminous Coal Act of 1937, by District Board 15, alleging that Blue Label Coal Company, a code member, the defendant, wilfully violated the provisions of the Bituminous Coal Code or the rules and regulations thereunder, by allowing excess weights on coal sold to the Farrington Coal Company, Kansas City, Missouri, and praying that the Division either can-

cel and revoke the defendant's code membership or, in its discretion, direct the defendant to cease and desist from violation of the Code or the rules and regulations thereunder;

The defendant having filed an answer denying generally the allegations of the complaint;

Pursuant to a Notice of and Order for Hearing, a hearing in this matter having been held on September 11, 1941, before D. C. McCurtain, a duly designated Examiner of the Division, at a hearing room thereof in Kansas City, Missouri, at which all interested persons were afforded an opportunity to be present, adduce evidence, cross-examine witnesses and otherwise be heard, and at which the defendant appeared;

The Examiner having filed his Report, Proposed Findings of Fact, Proposed Conclusions of Law, and Recommendations, dated November 7, 1941, recommending that an order be entered revoking and cancelling the code membership of the defendant;

The defendant having filed exceptions thereto;

The undersigned having made Findings of Fact herein and having rendered an Opinion, which are filed herewith; [1]

Now, therefore, it is ordered, That the exceptions of the defendant, Blue Label Coal Company, to the Proposed Findings of Fact, Proposed Conclusions of Law, and Recommendations of the Examiner, be and they are hereby severally overruled.

It is further ordered, That the Proposed Findings of Fact and Proposed Conclusions of Law of the Examiner be, and they hereby are, approved and adopted as the Findings of Fact and Conclusions of Law of the undersigned.

It is further ordered, That the code membership of the defendant, Blue Label Coal Company, be, and it is hereby revoked and cancelled, effective 15 days from the date hereof.

It is further ordered, That prior to any reinstatement of the defendant, or any partner therein, to membership in the Code, the defendant, or any partner therein, shall pay to the United States a tax in the amount of $1,075.93, as provided in section 5 (c) of the Bituminous Coal Act of 1937.

Dated: January 24, 1942.

[SEAL] DAN H. WHEELER,
Acting Director.

[F. R. Doc. 42-752; Filed, January 27, 1942; 10:38 a. m.]

[Docket Nos. 1591-FD, 1592-FD]

IN THE MATTER OF E. P. WHITED, DEFENDANT, AND IN THE MATTER OF J. B. WHITED, DEFENDANT

ORDER APPROVING AND ADOPTING EXAMINER'S REFORT AND REVOKING CODE MEMBERSHIP

A complaint having been filed with the Bituminous Coal Division, pursuant to the provisions of section 4 II (j) and 5 (b) of the Bituminous Coal Act of 1937, by District Board 8, complainant, alleging wilful voilation by E. P. Whited and J. B. Whited, code members in District 8, defendants, of the Bituminous Coal Code or rules and regulations thereunder as follows:

That the defendants with full knowledge of the requirements contained in the Schedule of Effective Minimum Prices For District No. 8 For Truck Shipments and with intent to violate the same and in violation thereof, sold for truck shipments, between October 1, 1940 and February 24, 1941, inclusive, coals produced at the defendants' mine (Mine Index No. 2260), in District 8, at prices lower than the effective minimum f. o. b. mine prices for such coals.

Pursuant to Orders of the Director and after notice to all interested persons, a hearing having been held in this matter on April 4, 1941, before Charles O. Fowler, a duly designated Examiner of the Division at a hearing room thereof;

All interested persons having been afforded an opportunity to be present at the hearing, to adduce evidence, cross-examine witnesses and otherwise be heard;

The Examiner having made and entered his Proposed Findings of Fact, Conclusions of Law and Recommendations in the above proceedings dated December 17, 1941, recommending that the code membership of the defendants be revoked and cancelled;

An opportunity having been afforded to the defendants to file exceptions thereto and supporting briefs, and no such exceptions or supporting briefs having been filed;

The undersigned having considered the matter and having determined that the Proposed Findings of Fact, Proposed Conclusions of Law, and Recommendations of the Examiner should be approved and adopted as the Findings of Fact and Conclusions of Law of the Director;

It is, therefore, ordered, That the Proposed Findings of Fact, Proposed Conclusions of Law and Recommendations of the Examiner be and they are hereby adopted as the Findings of Fact and Conclusions of Law of the undersigned;

It is further ordered, That pursuant to section 5 (b) of the Act, the code membership of the defendant, E. P. Whited, and the code membership of the defendant, J. B. Whited, be and the same are hereby revoked and cancelled, effective fifteen (15) days from the date of this Order.

It is further ordered, That, prior to any reinstatement of the defendants, E. P. Whited and J. B. Whited, or either of them, to membership in the Code, they shall pay to the United States a tax in the amount of $431.43 as provided in section 5 (c) of the Bituminous Coal Act of 1937.

Dated: January 26, 1942.

[SEAL] DAN H. WHEELER,
Acting Director.

[F. R. Doc. 42-753; Filed, January 27, 1942; 10:39 a. m.]

[1] Not filed as part of the original.

[Docket No. A-1238]

IN THE MATTER OF THE PETITION OF THE BITUMINOUS COAL CONSUMERS' COUNSEL FOR AN ORDER ESTABLISHING PRICES FOR THE SALE OF 30,000 TONS OF COAL SHIPPED BY RIVER FROM THE MINES OF SUBDISTRICT 4 OF DISTRICT 13 TO THE WILSON DAM STEAM PLANT OF THE TENNESSEE VALLEY AUTHORITY, AND FOR TEMPORARY RELIEF

MEMORANDUM OPINION AND ORDER GRANTING TEMPORARY RELIEF

An original petition, pursuant to section 4 II (d) of the Bituminous Coal Act of 1937, has been duly filed with the Bituminous Coal Division ("Division") on December 24, 1941, by the Bituminous Coal Consumers' Counsel ("Consumers' Counsel"). The petition states that the Consumers' Counsel is dissatisfied with certain coordinated minimum prices and rules and regulations contained in the price schedules for District 13; that the minimum prices now applicable to producers in Subdistrict 4 of District No. 13 (Tennessee-Georgia truck mines) are apparently applicable only for shipment by truck, whereas the minimum prices now applicable to producers in Subdistrict 3 of District No. 13 (Tennessee-Georgia rail-connected mines) similarly situated with respect to the Tennessee River, cover coal shipped by river; and that the mines in Subdistrict 4 of District 13 are located within reasonable trucking distance of the Tennessee River, a majority of them being within 30 miles of that river.

The petitioner avers that a considerable portion of the Tennessee River is now provided with one of the best navigation channels in the inland waterways system as a result of the improvements made by the Tennessee Valley Authority ("Authority"); that the Authority maintains a large steam plant for the generation of electricity at Wilson Dam, Alabama, in Market Area No. 117, which consumes approximately 1,500 tons of bituminous coal per day, and which is equipped to receive free alongside deliveries of coal; and that prior to the completion of the recent navigation improvements on the Tennessee River, the Authority purchased coal exclusively from producers operating mines in Subdistrict 1 of District 13 (Alabama rail-connected mines); and that the Authority has been purchasing up to 700 tons of coal per day for shipment by truck from producers in Subdistrict 4 of District 13 for consumption in another steam plant which it operates at Hales Bar, Tennessee, on the Tennessee River. It is further alleged that the Authority has recently purchased and consumed 1000 tons of Subdistricts 3 and 4 coals in its Wilson Dam plant in a successful test of their burning qualities. The petitioner contends that the Authority has found the coal produced by Subdistricts 3 and 4 (Tennessee-Georgia rail and truck) mines to be of equal or better quality than the coals produced by the rail-connected mines in Subdistrict 1 (Alabama), and believes that such coals

will give satisfactory service at its plant at Wilson Dam.

The petitioner further states that the Authority desires to arrange for barge transportation of 30,000 tons of coal from South Pittsburg, Tennessee, and other points on the Tennessee River accessible by truck from the mines of Subdistrict 4, to Wilson Dam, for the purpose of determining feasability of regular purchases of coal from Subdistrict 4 mines for barge delivery to its Wilson Dam plant. According to the petition, the Authority is willing to pay the minimum f. o. b. mine prices now applicable for shipment by truck for this movement of coal, plus the costs of transportation from the mine tipple to the Wilson Dam steam plant.

An informal conference, upon notice to interested parties, was held on January 8, 1942, pursuant to the Rules and Regulations Governing Practice and Procedure in section 4 II (d) proceedings, for the purpose of affording interested parties the opportunity of expressing their views concerning the temporary relief prayed for.

Represented at the conference in support of the requested relief were Consumers' Counsel; Blaine Buchanan, appearing for certain producers in Subdistrict 4 of District 13; and the Tennessee Valley Authority. Parties at the conference opposing the requested relief were: District Board 7; District Board 13; W. H. Saddler, appearing on behalf of certain companies in District 13; H. McDermott, appearing for the Stith Coal Company; B. G. Jordan, appearing for the A B C Coal and Coke Company; James C. Stephenson, appearing for the Cane Creek Mining Company and the National Coal and Coke Company; J. M. Chapman, appearing for the Chapman Coal Sales Company; A. W. Vogtle, appearing for the DeBardeleben Coal Corporation; and J. H. Moore, appearing for the Brookside-Pratt Mining Company, all code members in Subdistrict 1 of District 13 or their sales agents.

Representations made at the informal conference disclose the following information:

The Tennessee Valley Authority, an instrumentality of the United States, operates a number of hydro plants generating electricity. Its system of transmission lines runs throughout the State of Tennessee as well as through parts of four other southeastern states. As auxiliary to the hydro plants, this agency also operates six steam plants, one of which is located at the Wilson Dam on the Tennessee River (Sheffield, Alabama, Market Area No. 117). At present, the generating plants at Wilson Dam are a source of power for essential defense industries. Due to an unprecedented demand for power, the steam generating facilities at Wilson Dam have been operating at maximum capacity.

All the requirements of coal for the steam plant at Wilson Dam are now supplied by producers in the Alabama field (Subdistrict 1) of District 13, pursuant to formal agreements between the Authority and the producers or their sales representatives.[1] The coal supplied from the Alabama field is chiefly washed screenings, with some run of mine. It delivers at Wilson Dam at approximately $3.98 or $4.00 per ton.

There seems to be no doubt that the present Alabama producers can supply the maximum coal needs of the Authority at the steam plant at Wilson Dam and the nitrate plant nearby. However, representatives of the Authority contend that the steam plant here should have available an alternative supply in the event there is an interruption in shipments from the Alabama field. Though the factors they cited as giving rise to the fear that there might be a cessation in shipments from the Alabama fields seem remote, representatives of the Authority stressed the necessity of being prepared for any and all eventualities in these times of national emergency. Further, it is contended that, pursuant to congressional direction, the Authority has improved the Tennessee River for navigation purposes. The mines of Subdistrict No. 4 have access to the developed part of this waterway at South Pittsburg, Tennessee, where the Authority proposes to provide loading facilities for barge shipment of coal to the steam plant at Wilson Dam in the event that the requested relief is granted.[2]

It was contended that a large group of mines in the Whitwell Area of Subdistrict 4 could truck coal to the river at South Pittsburg, where the coal could be loaded on barges for shipment to Wilson Dam. These barges would be unloaded just above Wilson Dam by a derrick now owned and operated by the Authority; the coal then would be transferred to railroad cars for switching over their own lines for a distance of about two miles to the steam plant. On the ground that the Authority is obligated to secure its coal requirements at the lowest possible cost, its representatives stated that the purpose of the proposed movement of 30,000 tons, as set forth in the petition, was to determine whether sufficient savings could be obtained by the purchase of coal from Subdistrict 4 to warrant more extensive movement of such coals in the future. According to the petition, the Authority is willing to pay the f. o. b. mine prices now applicable for shipment by truck for this movement and to assume all the costs of transporting this coal from the mine tipple to the steam plant at Wilson Dam.

While the Alabama suppliers are now furnishing in most cases, washed screenings, the truck mines of Subdistrict 4 would supply mine run coal for this movement. The f. o. b. mine price for this coal for truck shipment is now $2.35 per ton. The truck mines from whom the Authority desires to purchase this coal are located in the area of approximately 30 miles from the proposed loading point at South Pittsburg. Most of this coal is likely to come from mines located at an average distance of 22 to 25 miles from South Pittsburg.

It is estimated that average trucking charge or expense for trucking coal from these truck mines to South Pittsburg would be about 60 cents.[3] To these charges must be added an estimated 10 cents per ton loading charge, a barge rate of 60 cents per ton and a lifting cost of 15 cents per ton at Wilson Dam.

Strong contentions are made against the advisability of this proposed relief, by the Alabama producers, District Boards 7 and 13.[4] It was contended that there never has been any failure on the part of these producers to meet all the coal requirements of the Tennessee Valley Authority at Wilson Dam; that the Authority has never required the maximum amounts stipulated in its agreements with the producers; and that a full time operation of the steam plant throughout the remainder of the contract period would not exhaust the maximum requirements under the contracts. In view of the recent new wage contract with the miners in Alabama, it was urged that it is not likely that there would be a stoppage of work due to labor trouble; for various reasons, it was also argued that an interruption of transportation due to car shortage, strikes or sabotage was unlikely. Finally, the argument was made that the truck coals of Subdistrict 4 have not been coordinated with the coals of the Alabama field.

The foregoing representations were considerably amplified in the course of the informal conference.

The Acting Director has carefully considered the conflicting contentions here advanced. The situation seems to be that the Tennessee Valley Authority, owing to the wartime demand on its facilities, believes itself to be in need of an alternative source of supply in order to ensure a continuing supply of coal. This supply it seeks from an area from which it has not previously purchased coal. The undersigned is not able to conclude that there is any objection to this so long as the prices established for such coal do not give it a competitive

[1] These agreements are on file with the Division and the undersigned has been requested to take notice of their provisions. A great deal was said about their probable legal effect during the course of the conference. The Counsel for certain Alabama producers, in an informal brief submitted to the undersigned, endeavors to substantiate his contentions at the conference that these writings obligated the Authority to buy all its coal requirements for the Wilson Dam steam plant from the Alabama suppliers. I find it unnecessary to attempt to interpret these agreements in passing upon the merits of the proposal for prices of the coals of Subdistrict 4 for movement into Market Area 117. Their interpretation and legal effect is entirely a matter for the parties to the agreements.

[2] At present certain mines in the Tennessee-Georgia field, like those in the central Alabama field, have rail prices for shipments to Sheffield, Alabama. However, these prices result in a delivered price at Wilson Dam in excess of $4 per ton.

[3] This trucking charge or expense may be sufficient to include a weighing charge of 10 cents for each truck load.

[4] The coals of District 7 are not involved in this proceeding. District Board 7 objected to the requested relief principally on the ground that it might serve as a precedent for similar relief elsewhere.

advantage over other coal now moving to the Authority. As has been pointed out the price of central Alabama coal delivered to the Authority at Wilson Dam is from $3.98 to $4.00 per ton. The charges incident to moving coal from the loading point at South Pittsburg, Tennessee, in Subdistrict 4, to Wilson Dam include a charge of 60 cents per ton for river transportation and 15 cents per ton for lifting. These charges amount to 75 cents per ton. Therefore, if the Authority is required to pay $3.25 per ton for the coal f. o. b. the barges at South Pittsburg, the coal from Subdistrict 4 will reach it at a delivered price of $4.00, which is the same delivered price at which it receives coal from the central Alabama fields.[5] Under such circumstances it cannot be said that the central Alabama producers will be unduly prejudiced. The Acting Director therefore finds and concludes that a reasonable showing has been made of the necessity for granting temporary relief here.

The relief granted will be limited as requested to June 30, 1942, unless otherwise ordered. And jurisdiction will be reserved to enter such further order or orders affecting this movement of coal as is found to be necessary.[6] The order will set a base price of $3.25 per ton f. o. b. the barge. This base price will be subject to an adjustment in the event a producer sells the coal for such shipment f. o. b. the mine and the coal is trucked to the loading facilities at South Pittsburg by an independent trucker. In such case the f. o. b. mine price will be adjusted so that such price plus the actual cost of transportation to the loading facilities will be not less than $3.25 per ton.[7]

Now therefore it is ordered, That temporary relief pending final disposition of this proceeding is hereby granted by adding to the Schedule of Effective Minimum Prices for District No. 13 for Truck Shipments (at p. 24 thereof; Subdistricts 3 and 4 Subsections) the following Price Exception:

Any code member producer whose mine is located in Subdistrict 4 and which mine is located within a radius of 30 miles of river loading facilities at South Pittsburg, Tennessee, may ship by truck run-of-mine (Size Group 7) coal from such mine to river loading facilities at South Pittsburg, Tennessee, for shipment by river to Market Area 117 at a minimum price of not less than $3.25 per net ton loaded into barges;

Provided, however, That when such producers sell or transport such coal for transportation to the South Pittsburg loading facilities by an independent trucker, they may if the actual transportation costs exceed 60 cents per net ton reduce the effective minimum price of $3.25 by an amount no greater than the excess of such costs over said 60 cents; and they shall, if the actual transportation costs are less than 60 cents per net ton for such shipment, add to the effective minimum f. o. b. price of $3.25, an amount not less than the difference between said 60 cents and their actual costs;

Provided further, That the relief herein granted shall apply only to coal shipped subsequent to the date hereof; and

Provided further, That the effectiveness of this price exception will expire on June 30, 1942, unless otherwise ordered.

And it is further ordered, That jurisdiction is reserved to enter such further order or orders as is found necessary in the premises.

Notice is hereby given that applications to stay, terminate or modify the temporary relief herein granted may be filed pursuant to the applicable rules and regulations.

Nothing contained herein shall be deemed to constitute a ruling or expression of the Acting Director's views concerning the final disposition of this proceeding or the nature of the relief which may hereafter be granted.

Dated: January 24, 1942.

[SEAL] DAN H. WHEELER,
Acting Director.

[F. R. Doc. 42-754; Filed, January 27, 1942; 10:39 a. m.]

[Docket No. 1508-FD]

IN THE MATTER OF THE APPLICATION OF INDIANA COALS CORPORATION FOR PROVISIONAL APPROVAL AS A MARKETING AGENCY

MEMORANDUM OPINION AND ORDER

By an Order of May 27, 1941, the Director, pursuant to and in accordance with Section 12 of the Bituminous Coal Act of 1937, provisionally approved Indiana Coals Corporation, the applicant, as a "marketing agency." On January 16, 1942, the applicant filed a motion for leave to amend its Producer and Sub-Agent contracts as set forth below and for leave to enter into contracts with Princeton Mining Company and Black Hawk Coal Corporation, code members in District 11.

The applicant seeks leave to amend Clause Ninth (b) and (c) of its Producer contracts, in order to reduce the commission charges to 2½ mills per ton and to permit an allowance of discounts to registered farmers' cooperative organizations, so as to read as follows:

Ninth: (b) Where the producer appoints a sub-agent for the sale of its coal, the commission to the Selling Agent shall be _____ Per Cent (_____%) to the Sub-Agent and such amount not exceeding One Cent (1¢) per ton to the Selling Agent as may be fixed from time to time by agreement between the Selling Agent and the Producer. Until changed by subsequent agreement, the commission to Selling Agent shall be two and one-half (2½) mills per ton.

(c) Where the coal is sold through registered distributors or registered farmers' co-operative organizations at the discounts authorized by the Selling Agent to such distributors or organizations, the commission shall be not in excess of _____ Per Cent (_____%) to the Sub-Agent and such amount not exceeding one cent (1¢) per ton to the Selling Agent as may be fixed from time to time by agreement between the Selling Agent and the Producer. Until changed by subsequent agreement, the commission to Selling Agent shall be two and one-half (2½) mills per ton.

The applicant further seeks leave to amend Clause Nineteenth of its Producer contracts, so as to read as follows:

Nineteenth: This agreement shall become effective _____, 1942. This agreement shall continue in force until March 24, 1942, and unless notice of cancellation is given on or before _____, 1942, this agreement shall continue in force for succeeding one year periods, unless either party gives written notice sixty (60) days previous to _____ of any year of its intention of cancellation.

The applicant further seeks to amend section Six (b) of its Sub-Agency contracts, in order to permit the allowance of discounts to registered farmers' co-operatives, to as to read as follows:

Section Six: (b) Where coal is sold through registered distributors or registered farmers' co-operatives at the discounts authorized by the Selling Agent to such distributors or organizations, the commission shall be _____ Per Cent (_____%), and in no case in excess of _____ Per Cent (_____%), based on the f. o. b. mine price after deducting such discounts and allowances properly chargeable to the Selling Agent or Producer as hereinbefore provided.

On January 23, 1942, the Bituminous Coal Consumers' Counsel filed a Statement concerning the applicant's motion of January 16. In this Statement the Consumers' Counsel represents that the proposed amendments to Clause Ninth (c) of the applicant's Producer contracts and Section Six (b) of its Sub-Agency contracts substitute for the word "wholesalers", presently appearing in said clauses, the words "registered distributors or registered farmers' cooperative organizations." The Consumers' Counsel claims that these amendments do not clearly conform said contracts to condition numbered 3 of the Order Granting Provisional Approval herein dated May 27, 1941. That condition provides that "The form of sub-agency contract submitted for approval should be modified so as to permit sales by sub-agents to registered farmers' cooperative organizations and to permit such sub-agents to allow such organizations the same dis-

[5] The coals shipped to Wilson Dam from the central Alabama fields are chiefly washed screenings, whereas the coal sought to be purchased from the Subdistrict 4 mines is mine-run.

[6] Of course producers, their sales agents and distributors, selling coal pursuant to the relief herein granted are subject to all the requirements of the Division regarding reporting, and to the provisions of all other applicable rules and regulations.

[7] Cf. Docket No. A-130.

counts which are permitted to be allowed on sales to registered distributors."

The undersigned has considered the proposed amendments in the light of the Statement by the Consumers' Counsel and is of the opinion that the amendments to Clause Ninth (c) of the Producer contracts and section Six (b) of the Sub-Agency contracts as proposed by the applicant do comply with the Order Granting Provisional Approval dated May 27, 1941, and that the contract as so amended will permit sales to registered farmers' cooperative organizations and will permit the allowance to such organizations of the same discounts as are permitted to be allowed on sales to registered distributors.

With respect to the applicant's request that it be permitted to enter into contracts with Princeton Mining Company and Black Hawk Coal Corporation, the applicant sets forth that these two producers operate rail shipping mines in District 11; that they produce coal in the 5th seam and not Brazil Block coal; that the addition of these two producers will not bring the tonnage covered by the applicant's Producer contracts beyond 80 percent of the estimated annual production of District 11 and will not change the status of the applicant with respect to General Order No. 6; and that entering into contracts with said producers will not tend to restrict coal in interstate commerce or cause the public to receive coal at unreasonable prices.

The undersigned has considered the applicant's motion for leave to amend the Producers' and Sub-Agents' contracts and for leave to enter into contracts with additional producers and the Statement of the Consumers' Counsel concerning said motion and finds that said motion should be granted.

Now, therefore, it is ordered, That Clause Ninth (b) and (c) and Clause Nineteenth of the contracts between producers and the applicant and Section Six (b) of the Sub-Agency contracts entered into by applicant be, and they hereby are, amended to read as is set forth above.

It is furthered ordered, That applicant may enter into Producer contracts with Princeton Mining Company and Black Hawk Coal Coporation.

Dated: January 26, 1942.

[SEAL] DAN H. WHEELER,
Acting Director.

[F. R. Doc. 42-755; Filed, Janary 27, 1942; 10:39 a. m.]

[Docket No. 1737-FD]

IN THE MATTER OF RAWALT COAL COMPANY, A CORPORATION, DEFENDANT

ORDER GRANTING APPLICATION FOR RESTORATION OF CODE MEMBERSHIP

A written complaint having been filed on May 7, 1941, by the Bituminous Coal Producers Board for District No. 10, as complainant pursuant to section 4 II (j) and 5 (b) of the Bituminous Coal Act of 1937 (the "Act"), alleging wilful violation by the Rawalt Coal Company, defendant in the above-entitled matter, of the Act, the Bituminous Coal Code (the "Code") and the effective minimum prices established thereunder, by selling during the period February 6 to February 21, 1941, approximately 864 tons of coal at prices less than the effective minimum prices therefor; and

A hearing in this matter having been held on October 2, 1941, at Peoria, Illinois, before a duly designated examiner of the Division, and the complaint having been amended at said hearing, and the defendant at said hearing having made certain offers and admissions in respect to the amended complaint and having confirmed the same by agreement dated December 20, 1941, the original of which is on file with the Division; and

An order having been entered herein on December 9, 1941, cancelling and revoking the code membership of the Rawalt Coal Company effective ten (10) days from the date of service thereof upon the defendant; and

Said Order of Cancellation and Revocation having been duly served January 12, 1942, upon the Rawalt Coal Company; and

The Rawalt Coal Company having filed with the Division its application dated January 13, 1942, for restoration of its code membership, to become effective simultaneously with the effective date of said cancellation and revocation of its code membership; and

It appearing from said application that the Rawalt Coal Company has paid to the Collector of Internal Revenue at Peoria, Illinois, on January 13, 1942, the sum of $1,317.14 pursuant to said Order dated January 5, 1942, as a condition precedent to restoration of its code membership.

Now, therefore, it is ordered, That said application of the Rawalt Coal Company dated January 13, 1942, for restoration of its code membership to become effective simultaneously with the effective date of said cancellation and revocation of code membership be, and the same hereby is granted.

It is further ordered, That said restoration of the code membership of the Rawalt Coal Company shall become effective simultaneously with the effective date of said cancellation and revocation of code membership.

Dated: January 24, 1942.

[SEAL] DAN H. WHEELER,
Acting Director.

[F. R. Doc. 42-756; Filed, January 27, 1942; 10:40 a. m.]

[Docket No. 1818-FD]

IN THE MATTER OF SMITH & LAMBERT, A PARTNERSHIP, DEFENDANT

ORDER GRANTING APPLICATION FOR RESTORATION OF CODE MEMBERSHIP

A written complaint having been filed on July 25, 1941, by the Bituminous Coal Producers Board for District No. 3, as complainant, pursuant to sections 4 II (j) and 5 (b) of the Bituminous Coal Act of 1937 (the "Act"), alleging wilful violation by Smith and Lambert, a partnership, composed of Harry B. Smith and Gus J. Lambert, Defendant in the above-entitled matter, of the Act, the Bituminous Coal Code (the "Code") and the effective minimum prices established thereunder by selling a substantial tonnage of bituminous coal produced at its Taylor (Cover) Mine (Mine Index No. 841) during the period subsequent to October 1, 1940, at prices less than the effective minimum prices established therefor; and

An Order having been made herein on December 31, 1941, cancelling and revoking the code membership of Smith and Lambert, a partnership, effective fifteen (15) days from the date thereof; and

Said order of cancellation and revocation having been duly served on January 9, 1942, upon Smith and Lambert, a partnership; and

Smith and Lambert having filed with the Division its application dated January 16, 1942, for restoration of its code membership to become effective simultaneously with the effective date of said cancellation and revocation of its code membership; and

It appearing from said application that Smith and Lambert, a partnership, has paid to the Collector of Internal Revenue at Parkersburg, West Virginia, on January 13, 1942, the sum of $68.02, pursuant to said Order dated December 31, 1941, as a condition precedent to the restoration of its code membership.

Now, therefore, it is ordered, That said application of Smith and Lambert, a partnership, dated January 16, 1942, for restoration of its code membership be, and the same hereby is, granted.

It is further ordered, That said restoration of the code membership of Smith and Lambert, a partnership, be effective as of the effective date of said cancellation and revocation of code membership.

Dated: January 24, 1942.

[SEAL] DAN H. WHEELER,
Acting Director.

[F. R. Doc. 42-757; Filed, January 27, 1942; 10:40 a. m.]

Bureau of Reclamation.

FIRST FORM RECLAMATION WITHDRAWAL

COLORADO RIVER STORAGE PROJECT, ARIZONA

DECEMBER 3, 1941.

The SECRETARY OF THE INTERIOR.

SIR: In accordance with the authority vested in you by the Act of June 28, 1934 (48 Stat. 1269) as amended, it is recommended that the following described lands be withdrawn from public entry under the first form withdrawal, as provided in Section 3, Act of June 17, 1902 (32 Stat. 388) and that Departmental

Order of March 6, 1936, including the said lands in Grazing District No. 2, Arizona, be modified and made subject to the withdrawal effected by this order.

COLORADO RIVER STORAGE PROJECT

Gila and Salt River Meridian, Arizona

Township 21 North, Range 20 West:
Sec. 15, Lots 1, 2, NE¼, E½NW¼, S½;
Sec. 16, Lots 1, 2, 3, 4, SW¼NE¼, NW¼, S½;
Sec. 21, All; Sec. 22, All.

Respectfully.

JOHN C. PAGE,
Commissioner.

I concur: December 5, 1941.

ARCHIE D. RYAN,
Acting Director of Grazing Service.

I concur: December 23, 1941.

FRED W. JOHNSON,
Commissioner, General Land Office.

JANUARY 15, 1942.

The foregoing recommendation is hereby approved, as recommended, and the Commissioner of the General Land Office will cause the records of his office and the local land office to be noted accordingly.

JOHN J. DEMPSEY,
Under Secretary.

[F. R. Doc. 42-745; Filed, January 27, 1942; 10:22 a. m.]

FIRST FORM RECLAMATION WITHDRAWAL

PROVO RIVER PROJECT, UTAH

DECEMBER 18, 1941.

The SECRETARY OF THE INTERIOR.

SIR: In accordance with the authority vested in you by the Act of June 28, 1934 (48 Stat. 1269), as amended, it is recommended that the following described lands be withdrawn from public entry under the first form withdrawal, as provided in Section 3, Act of June 17, 1902 (32 Stat. 388), and that Departmental Order of April 8, 1935, establishing Grazing District No. 2, Utah, be modified and made subject to the reclamation withdrawal effected by this order.

PROVO RIVER PROJECT

Salt Lake Meridian, Utah

Township 5 South, Range 3 East, Sec. 33, S½NE¼,
Township 6 South, Range 3 East, sec. 6, SW¼ NE¼.

Respectfully.

JOHN C. PAGE,
Commissioner.

I concur: January 5, 1942.

ARCHIE D. RYAN,
Acting Director of the Grazing Service.

I concur: January 7, 1942.

FRED W. JOHNSON,
Commissioner, General Land Office.

JANUARY 15, 1942.

The foregoing recommendation is hereby approved, as recommended, and the Commissioner of the General Land Office will cause the records of his office and the local land office to be noted accordingly.

JOHN J. DEMPSEY,
Under Secretary.

[F. R. Doc. 42-746; Filed, January 27, 1942; 10:22 a. m.]

FIRST FORM RECLAMATION WITHDRAWAL

PROVO RIVER PROJECT, UTAH

DECEMBER 10, 1941.

The SECRETARY OF THE INTERIOR.

SIR: In connection with the authority vested in you by the Act of June 28, 1934 (48 Stat. 1269), as amended, it is recommended that the following described lands be withdrawn from public entry under the first form withdrawal as provided in Section 3 of the Act of June 17, 1902 (32 Stat. 388).

PROVO RIVER PROJECT, UTAH

Salt Lake Meridian

Township 6 South, Range 3 East: Sec. 4, NW¼SW¼.

Respectfully,

JOHN C. PAGE,
Commissioner.

I concur: January 7, 1942.

FRED W. JOHNSON,
Commissioner, General Land Office.

JANUARY 15, 1942.

The foregoing recommendation is hereby approved, as recommended, and the Commissioner of the General Land Office will cause the records of his office and the local land office to be noted accordingly.

JOHN J. DEMPSEY,
Under Secretary.

[F. R. Doc. 42-747; Filed, January 27, 1942; 10:23 a. m.]

FIRST FORM RECLAMATION WITHDRAWAL

NASHVILLE RESERVOIR SITE, CALIFORNIA

NOVEMBER 28, 1941.

The SECRETARY OF THE INTERIOR.

SIR: In connection with the authority vested in you by the Act of June 28, 1934 (48 Stat. 1269), as amended, it is recommended that the following described lands be withdrawn from public entry under the first form withdrawal as provided in Section 3 of the Act of June 17, 1902 (32 Stat. 388).

NASHVILLE RESERVOIR SITE, CALIFORNIA

Mount Diablo Meridian

Township 8 North, Range 10 East:
Sec. 2, Lots 2, 6, 8, 14;
Sec. 11, Lots 3, 8, E½SE¼;
Sec. 12, Lots 5, 6, 7, NE¼NE¼, SW¼NE¼, NW¼SW¼, SE¼SW¼, S½SE¼;
Sec. 15, E½SE¼.
Township 9 North, Range 10 East:
Sec. 12, Lots 19, 20, 21;
Sec. 23, SE¼NE¼, NE¼SE¼;
Sec. 24, SE¼SW¼;
Sec. 25, Lot 6, N½NW¼;
Sec. 26, E½NE¼, NE¼SE¼;
Sec. 35, Lot 2.
Township 9 North, Range 11 East:
Sec. 18, Lot 4;
Sec. 19, Lots 2, 3, 4, W½SE¼, NE¼NW¼, E½SW¼;
Sec. 20, NE¼, SE¼NW¼, NE¼SW¼, SW¼SW¼, N½SE¼.

Respectfully.

JOHN C. PAGE,
Commissioner.

I concur: January 7, 1942.

FRED W. JOHNSON,
Commissioner, General Land Office.

JANUARY 15, 1942.

The foregoing recommendation is hereby approved, as recommended, and the Commissioner of the General Land Office will cause the records of his office and the local land office to be noted accordingly.

JOHN J. DEMPSEY,
Under Secretary.

[F. R. Doc. 42-748; Filed, January 27, 1942; 10:23 a. m.]

General Land Office.

AIR NAVIGATION SITE WITHDRAWAL NO. 176

ALASKA

It is ordered, Under and pursuant to the provisions of section 4 of the act of May 24, 1928, 45 Stat. 729, 49 U.S.C. 214, that the public land within the following-described boundaries, near Cold Bay, Alaska, be, and it is hereby, withdrawn from all appropriation under the public-land laws, subject to valid existing rights, for the use of the Department of Commerce in the maintenance of air navigation facilities:

Beginning at a point on the west boundary of the Naval Reserve established by Executive Order No. 5214 of October 30, 1929, from which the U.S.C. & G.S. monument "Cow", located at latitude 55°12'10.71" N., and longitude 162°41'57.76" W. bears N. 85° 52'50" E., 7,086.5 feet.

Thence by metes and bounds:
N. 24°57'30" W., 22,530.0 feet;
East, 9,506.8 feet; to a point on the west boundary of the Naval Reserve;
South, 20,426.1 feet, along west boundary of the Naval Reserve, to the point of beginning, containing 2,229 acres.

HAROLD L. ICKES,
Secretary of the Interior.

JANUARY 19, 1942.

[F. R. Doc. 42-749; Filed, January 27, 1942; 10:23 a. m.]

CIVIL AERONAUTICS BOARD.

[Docket Nos. 709, 423]

IN THE MATTER OF (1) THE TEMPORARY AMENDMENT OF THE CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY OF EASTERN AIR LINES, INC., FOR ROUTES NOS. 10 AND 40, AND OF PENNSYLVANIA-CENTRAL AIRLINES CORPORATION FOR ROUTE NO. 55, TO INCLUDE HUNTSVILLE, ALABAMA, AS AN INTERMEDIATE POINT: AND (2) THE APPLICATION OF EASTERN AIR LINES, INC., FOR A PERMANENT OR TEMPORARY CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

NOTICE OF ORAL ARGUMENT

Notice is hereby given, pursuant to the Civil Aeronautics Act of 1938, as

amended, particularly sections 401 and 1001 of said Act, in the above-entitled proceeding, that oral argument is hereby assigned to be held on January 30, 1942, at 10 a. m. (Eastern Standard Time) in Room 5042 Commerce Building, 14th Street and Constitution Avenue NW., Washington, D. C., before the Board.

Dated: January 26, 1942.

By the Civil Aeronautics Board.

[SEAL] DARWIN CHARLES BROWN, *Secretary.*

[F. R. Doc. 42-761; Filed, January 27, 1942; 10:57 a. m.]

FEDERAL COMMUNICATIONS COMMISSION.

[Docket No. 6129]

APPLICATION OF DROVERS JOURNAL PUBLISHING COMPANY (WAAF) CHICAGO, ILLINOIS FOR CONSTRUCTION PERMIT

ORDER REGARDING PROPOSED SIMULTANEOUS OPERATION OF STATIONS WAAF AND KFEL

It is ordered, On the Commission's own motion, this 23d day of January 1942, that the notice of issues heretofore released on the application in Docket No. 6129, be, and it is hereby, supplemented, as follows:

1. To determine the extent of any interference which would result from the simultaneous operation of Station WAAF, as proposed, and Station KFEL.

2. To determine the areas and populations which may be expected to lose primary nighttime service, particularly from Station KFEL, should Station WAAF operate as proposed, and what other broadcast service is available to these areas and populations.

By the Commission.

[SEAL] T. J. SLOWIE, *Secretary.*

[F. R. Doc. 42-741; Filed, January 27, 1942; 10:13 a. m.]

FEDERAL TRADE COMMISSION.

[Docket No. 4673]

IN THE MATTER OF THE CURTISS CANDY COMPANY, A CORPORATION

COMPLAINT AND NOTICE OF HEARING, ETC.

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, section 13), and section 3 of the Clayton Act (U.S.C. Title 15, section 14), hereby issues its complaint, stating its charges with respect thereto as follows:

Count I

PARAGRAPH ONE. Respondent, The Curtiss Candy Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, and has its office and principal place of business located in the Curtiss Building, 622 Diversey Parkway, Chicago, Illinois.

PAR. TWO. Respondent is now, and has been since June 19, 1936, engaged in the business of manufacturing, distributing and selling confectionery products, principally candy bars sold in wrappers bearing the names Baby Ruth, Butterfinger, Jolly Jack, Ko Ko Nut Roll, Curtiss Butter Toffey, Moon Spoon, and Nickaloaf for resale within the various states of the United States and in the District of Columbia. In the course and conduct of its said business respondent sells the aforesaid confections to purchasers located in the City of Chicago and in the various states of the United States and causes substantial quantities of said confections when sold to be shipped and transported from its place of business in the State of Illinois across state lines to the respective purchasers thereof in each of the several states of the United States and in the District of Columbia. Pursuant to an agreement between respondent and Automatic Canteen Company of America, large quantities of such confections have been and are being delivered to Automatic Canteen Company of America in Chicago, Illinois, intended to be, and which are, distributed by Automatic Canteen Company of America throughout the United States.

PAR. THREE. Respondent, in the course and conduct of its business, as aforesaid, is now and since June 19, 1936, has been, competitively engaged with other persons, firms and corporations who similarly manufacture, distribute and sell candy and confectionery products. Respondent, which was organized in 1923, has, however, grown until its distribution of such products is larger than any one of its competitors and the volume of its advertising is almost equal to all of its competitors.

PAR. FOUR. Among those purchasers to whom respondent sells large quantities of candy bars are some who dispose of the candy bars which they buy from respondent through the medium of vending machines. Such machines are located largely in moving picture houses and in factories. Today one such customer, Automatic Canteen Company of America, owns approximately one hundred thousand such candy vending machines, which in one year vend in excess of two hundred million candy bars, of which number several million are bars manufactured by respondent. Such candy vending machine distributors are generally competitively engaged in commerce with each other in efforts to obtain locations for these machines and in the distribution of goods sold to each by respondent. Competition for locations between these distributors is intense and the locations are generally obtained by those whose rental bid for space is the highest, although frequently efforts by highly paid pressure salesmen have been an important factor.

PAR. FIVE. In the course and conduct of its said business, the respondent, since June 19, 1936, has sold candy bars of like grade, quality and weight at the same time to vending machine distributors located in the same trade areas at different prices. To illustrate: some customers, such as Automatic Sales Company, were sold such bars in 60 count packages at a price of $1.35 delivered; other customers, such as Confection Cabinet Company, have purchased from respondent such 60 count packages at a price of $1.20 delivered. Automatic Canteen Company has sold such bars in 100 count packages at a price of $1.98, f. o. b. Chicago.

PAR. SIX. In many factories and plants in which vending machines dispense goods purchased from respondent are also located restaurants and candy counters distributing like candy and operated by competitors of the vending machine operators. In the course and conduct of its said business, since June 19, 1936, and while selling candy bars to the purchasers mentioned in Paragraph Five and at the prices set forth therein, the respondent sold in the same trade areas goods of like grade, quality and weight at a price of 24 bars for 64¢ to jobbers supplying candy vending machine operators and other retailers competitive with such favored candy vending machine operators as those mentioned in Paragraph Five:

PAR. SEVEN. In the course and conduct of its said business the respondent, since June 19, 1936, has discriminated in price by granting rebates, bonuses, or discounts dependent upon the quantities of candy bars purchased in specified size shipments within specified periods of time. To illustrate: In 1939 on two shipments of 100 boxes of candy each to the same buyer, a 2¢ per box rebate was granted on the second shipment; similarly, if the shipments contain 250 boxes each, a 3¢ per box rebate is granted; if the shipments contain 500 boxes each, a 4¢ per box rebate is granted; if the shipments contain 1,000 boxes each, a 5¢ per box rebate is granted on the second shipment.

PAR. EIGHT. In the course and conduct of its said business, the respondent, since June 19, 1936, has frequently discriminated in price in connection with the sale of its various candy bars through the use of so-called "deals" available to some but not all purchasers. Such deals have been variously designated, a few of which were designated as two for one, three for two and one-half, and Fall Plans. At times and in some local areas the respondent, since June 19, 1936, has sold, for instance, one Baby Ruth carton with one Butterfinger carton both for 85¢, and a deal whereby one 24-count package of Baby Ruth candy, one package containing 16 Butterfinger bars and 8 Jolly Jack bars, and an additional small box containing 5 bars of Baby Ruth candy was billed at a price of $1.28 per deal.

PAR. NINE. The effect of the discriminations in price alleged in Paragraphs Five, Six, Seven and Eight has been and may be substantially to lessen competition in the line of commerce in which respondent is engaged and to injure competition with respondent and with such customers of respondent who receive the benefit of such discriminations.

Such discriminations in price by respondent between different purchasers or

commodities of like grade and quality in interstate commerce in the manner and form aforesaid is in violation of the provisions of subsection (a) of section 2 of the Act described in the preamble hereof.

Count II.

PARAGRAPH ONE. Paragraphs One, Two and Three of Count I are hereby adopted and made a part of this Count as fully as if herein set out verbatim.

PAR. Two. In the course and conduct of its business in commerce, respondent since June 19, 1936, has secretly paid and contracted to pay sums of money to some of its customers as compensation and in consideration for promotional services and facilities furnished by such customers in connection with the sale and offering for sale of candy bars manufactured and sold by it to such customers while such payments were not available on proportional terms and on any terms to all competing customers selling such goods. To illustrate:

(a) A number of its largest customers, such as Walgreen Drug Company, Cunningham Drug Stores, Inc., Liggett Drug Company, Katz Drug Company, Peoples Drug Stores, and United Cigar Whelan Stores, were paid an amount calculated at 5% of the dollar volume of such customers' purchases, while customers competitive with those mentioned and others receiving such 5% were not advised of or allowed such payments as compensation for promotional services.

(b) Cunningham Drug Stores, Inc., Detroit, Michigan, received from respondent the following promotional allowances not made available to its competitors:

During 1938:	
Billboards	$1,000.00
Special dinner for store managers	150.00
Demonstrator salaries	30.00
Soda fountain newspaper campaign	300.00
During 1939:	
Soda fountain newspaper campaign	700.00
Golden anniversary allowance	1,000.00

PAR. THREE. The aforesaid acts of respondent are in violation of subsection (d) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Section 13).

Count III

PARAGRAPH ONE. Paragraphs One, Two and Three of Count I are hereby adopted and made a part of this Count as fully as if herein set out verbatim.

PAR. Two. In the course and conduct of its business in commerce, respondent since June 19, 1936, has secretly contracted to furnish and has furnished to some purchasers advertising and promotional services or facilities connected with the sale and offering for sale of respondent's candy bars upon terms not accorded to all purchasers on proportionally equal terms. To illustrate: respondent has paid and is paying the sum of $470.00 each 28-day period to the Independent Grocers Alliance of America as compensation for services which it renders to Independent Grocers Alliance jobber members in promoting the resale of respondent's goods purchased by such jobber members from respondent. Such promotion is by means of suggestive handbills, window posters, store displays and other promotional methods in the retail stores sponsored by the Independent Grocers Alliance jobbers.

PAR. THREE. The above-described acts and practices of respondent are in violation of sub-section (e) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Section 13).

Count IV

The Federal Trade Commission, having reason to believe that said respondent, The Curtiss Candy Company, has violated, and is now violating, the provisions of Section 3 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, commonly known as the Clayton Act, hereby issues this, its complaint, against respondent and states its charges in respect thereto as follows:

PARAGRAPH ONE. Paragraphs One, Two and Three of Count I are hereby adopted and made a part of this Count as fully as if herein set out verbatim.

PAR. Two. The respondent, in the course and conduct of its said business hereinabove described in Paragraph One, has sold and contracted to sell candy bars to various retail drug chain customers, such as Cunningham Drug Stores, Inc., and Walgreen Drug Company, for resale within the United States and the District of Columbia, and granted a discount of 5% of the dollar volume of purchases of respondent's candy bars on the agreement that the purchaser thereof shall not deal in the commodities of a competitor of respondent.

PAR. THREE. The purchasers with whom respondent agreed, as set forth in Paragraph Two, ceased to deal in the products of competitors of respondent so long as such agreements were in effect. The effect of the agreement set forth in Paragraph Two hereof may be substantially to lessen competition or tend to create a monopoly in respondent and in the purchasers with whom respondent entered into such contracts in the sale of candy bars in commerce between and among the several states of the United States and in the District of Columbia.

PAR. FOUR. The aforesaid acts of respondent constitute a violation of the provisions of Section 3 of the hereinabove mentioned Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes", approved October 15, 1914, and commonly known as the Clayton Act.

Wherefore, the premises considered, the Federal Trade Commission, on this 21st day of January, A. D. 1942, here issues its complaint against said respondent.

NOTICE

Notice is hereby given you, The Curtiss Candy Company, respondent herein, that the 27th day of February, A. D. 1942, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule IX) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * * * *

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts admitted constitute a violation of law or laws as charged in the complaint, to make and serve findings as to the facts and an order to cease and desist from such violations. Upon application in writing made contemporaneously with the filing of such answer, the respondent, in the discretion of the Commission may be heard on brief, in oral argument, or both, solely on the question as to whether the facts so admitted constitute the violation or violations of law charged in the complaint.

In witness whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 21st day of January, A. D. 1942.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 42-736; Filed, January 26, 1942; 1:14 p. m.]

[Docket No. 4677]

IN THE MATTER OF WALTER H. JOHNSON CANDY COMPANY, A CORPORATION

COMPLAINT AND NOTICE OF HEARING, ETC.

The Federal Trade Commission having reason to believe that the party respondent named in caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH ONE. Respondent, Walter H. Johnson Candy Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its office and place of business located at 341 West Superior Street, Chicago, Illinois.

PAR. TWO. Respondent is now, and has been since June 19, 1936, engaged in the business of manufacturing, distributing and selling confectionery products, principally candy bars sold in wrappers bearing the names Heavyweight Champ, Big Bonus, Power House, Brazil Fudge, and Money's Worth Fudge, which are generally sold in 24-count packages at a price of 64¢ less 2% cash discount. In the course and conduct of its said business respondent sells the aforesaid confections to purchasers located in the City of Chicago and in the various states of the United States and causes substantial quantities of said confections when sold to be shipped and transported from its place of business in the State of Illinois across state lines to the respective purchasers thereof in each of the several states of the United States and in the District of Columbia. Pursuant to an agreement between respondent and Automatic Canteen Company of America, large quantities of such confections have been and are being delivered to Automatic Canteen Company of America in Chicago, Illinois, intended to be, and which are, distributed by Automatic Canteen Company of America throughout the United States.

PAR. THREE. Respondent, in the course and conduct of its business, as aforesaid, is now, and since June 19, 1936, has been, competitively engaged with other persons, firms and corporations who similarly manufacture, distribute and sell candy and confectionery products.

PAR. FOUR. Among those purchasers to whom respondent sells large quantities of candy bars are some who dispose of the candy bars which they buy from respondent through the medium of vending machines. Such machines are located largely in moving picture houses and in factories. Today one such customer, Automatic Canteen Company of America, owns approximately one hundred thousand such candy vending machines, which in one year vend in excess of two hundred million candy bars, of which number approximately one million are bars manufactured by respondent. Such candy vending machine distributors are generally competitively engaged in commerce with each other in efforts to obtain locations for these machines and in the distribution of goods sold to each by respondent. Competition for locations between these distributors is intense and the locations are generally obtained by those whose rental bid for space is the highest, although frequently efforts by highly paid pressure salesmen have been an important factor.

PAR. FIVE. In the course and conduct of its said business, the respondent, since June 19, 1936, has sold candy bars of like grade, quality and weight at the same time to vending machine distributors located in the same trade areas at different prices. To illustrate: Customers generally who operate candy vending machines have been and are sold Heavyweight Champ bars in 100-count packages at a price of $2.50 delivered; other customers have purchased such goods at a price of $2.25 or $2.40, the customary cash discount being 2%. Automatic Canteen Company of America was sold such bars in 100-count packages at a net price of $1.99 f. o. b. Chicago, Illinois, and in addition many drop shipments were made elsewhere for such customer.

PAR. SIX. In many factories and plants in which vending machines dispense goods purchased from respondent are also located restaurants and candy counters distributing like candy and operated by competitors of the vending machine operators. In the course and conduct of its said business, since June 19, 1936, and while selling candy bars to the purchasers mentioned in Paragraph Five and at the prices set forth therein, the respondent sold in the same trade areas goods of like grade, quality and weight at a price of 24 bars for 64¢ to jobbers supplying candy vending machine operators and other retailers competitive with such favored candy vending machine operators as those mentioned in Paragraph Five.

PAR. SEVEN. The effect of the discriminations in price alleged in Paragraph Five has been and may be substantially to lessen competition in the line of commerce in which respondent is engaged and to injure competition with respondent and with such customers of respondent who receive the benefit of such discriminations.

Such discriminations in price by respondent between different purchasers of commodities of like grade and quality in interstate commerce in the manner and form aforesaid is in violation of the provisions of subsection (a) of section 2 of the Act described in the preamble hereof.

Wherefore, the premises considered, the Federal Trade Commission, on this 22nd day of January, A. D. 1942, here issues its complaint against said respondent.

NOTICE

Notice is hereby given you, Walter H. Johnson Candy Company, respondent herein, that the 27th day of February, A. D. 1942, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule IX) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the Complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * * * *

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts admitted constitute a violation of law or laws as charged in the complaint, to make and serve findings as to the facts and an order to cease and desist from such violations. Upon application in writing made contemporaneously with the filing of such answer, the respondent, in the discretion of the Commission may be heard on brief, in oral argument, or both, solely on the question as to whether the facts so admitted constitute the violation or violations of law charged in the complaint.

In witness whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and

its official seal to be hereto affixed, at Washington, D. C., this 22nd day of January, A. D. 1942.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 42-737; Filed, January 26, 1942; 1:14 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

IN THE MATTER OF R. P. CLARKE & CO., LTD., 122 FEDERAL BUILDING, 85 RICHMOND STREET, TORONTO, ONTARIO, CANADA

FINDINGS AND ORDER REVOKING REGISTRATION

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 26th day of January, A. D. 1942.

R. P. Clarke & Co., Ltd., hereinafter called the registrant, being registered with the Commission as an over-the-counter broker-dealer pursuant to section 15 of the Securities Exchange Act of 1934; and

The Commission having issued an order stating that information had been reported to the Commission tending to show that Roy Percy Clarke, president of the registrant, was convicted on March 7, 1941, of divers felonies or misdemeanors involving the purchase or sale of securities or arising out of the conduct of the business of a broker or dealer, and setting a hearing on the question whether the registration of the registrant should be suspended or revoked; a hearing having been held after due notice; and the Commission having duly considered the matter and being fully advised in the premises, and having found that Roy Percy Clarke, president of the registrant, was convicted on March 7, 1941, by a duly constituted court at Kingston, in the County of Frontenac, Ontario, Canada, of violations of the Canadian Securities Act and the Canadian Criminal Code in transactions involving the purchase or sale of securities and arising out of the conduct of the business of a broker or dealer, and that revocation of the registration of the registrant is in the public interest;

It is ordered, Pursuant to section 15 (b) of the Securities Exchange Act of 1934, that the registration of R. P. Clarke & Co., Ltd., be, and the same hereby is, revoked.

By the Commission (Chairman Purcell, Commissioners Healy, Eicher, Pike, and Burke).

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 42-762; Filed, January 27, 1942; 11:36 a. m.]